UNITED STATES DEPARTMENT OF COMMERCE
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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/598,653	03/08/96	THANGE	M 161

EXAMINER: DAYOAN, B

ART UNIT: 2

PAPER NUMBER: 2

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C2M1/0828

3208

DATE MAILED: 08/28/96

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☐ Responsive to communication filed on _____ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), 0 days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. ☒ Notice of References Cited by Examiner, PTO-892.
2. ☒ Notice of Draftsman's Patent Drawing Review, PTO-948.
3. ☐ Notice of Art Cited by Applicant, PTO-1449.
4. ☐ Notice of Informal Patent Application, PTO-152.
5. ☐ Information on How to Effect Drawing Changes, PTO-1474.
6. ☐ _____.

Part II SUMMARY OF ACTION

1. ☒ Claims 1-20 are pending in the application.

   Of the above, claims _____ are withdrawn from consideration.

2. ☐ Claims _____ have been cancelled.

3. ☐ Claims _____ are allowed.

4. ☒ Claims 1-20 are rejected.

5. ☐ Claims _____ are objected to.

6. ☐ Claims _____ are subject to restriction or election requirement.

7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____. has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).

12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____ ; filed on _____.

13. ☐ Since this application apppears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

EXAMINER'S ACTION

DETAILED ACTION

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 250 words. It is important that the abstract not exceed 250 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "comprising", "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Rejections - 35 USC § 112

2. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In Claims 1, 2, 5, 15, and 18;

Use of the terms "sponge-like" and "cylindrical-like" are indefinite inasmuch as it is unclear how applicant intends that these terms be associated with these structures. For example, it is unclear if "sponge-like" refers to resilience, porosity, or material composition of sponge.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Griffiths in view of Jonat.

Griffiths discloses a shoe sole including a noisemaker substantially as claimed. Jonat teaches that a noisemaker can be provided in the toe area of a shoe for providing a sound in response to toe pressure and further teaches that any of a number of different noisemakers are suitable. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the sole of Griffiths with a noisemaker provided in the toe area of the sole, as taught by Jonat, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. With respect to the inclusion of a one way air beeper in the shoe of Griffiths, as modified by Jonat, the examiner takes Official Notice of the equivalence of one-way and two-way noisemakers for producing a signal, such being obvious for use herein. Further, with respect to the particular materials from which the sheet of material is formed, Griffiths discloses the use of leather, however it would have been obvious to one having ordinary skill in the art at the time the invention was made to select a material sheet of plastic, fiber, or cardboard, since it has been held to be within the general skill of a worker in the art to

select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. With respect to claims 5-8, 11-13, and 15-20, it would have been an obvious matter of design choice to modify the combined teachings of the Griffiths and Jonat references by having a one-way air noise-maker including a pair of ledges, a solid member, an enclosure member, and a tab, since Applicant has not disclosed that utilizing this particular arrangement to fabricate a one-way air noise-maker solves any stated problem or is for any particular purpose and it appears that the noise-maker would perform equally well with any arrangement of a one-way air noise-maker.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to B. Dayoan whose telephone number is (703) 308-1148.

B. Dayoan
Primary Examiner
Art Unit 3208

bcd
August 15, 1996